

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

July 1, 2015

Via Certified Mail – Return Receipt Requested

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Via Certified Mail – Return Receipt Requested

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Via First Class Mail

Administrator Dennis McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave., Ste. 900
Seattle, WA 98101

Re: Columbia Riverkeeper v. Fast Auto Wrecking & Towing, LLC, No. 15:05265-BHS

Dear Honorable Civil Servants:

Please find enclosed the proposed consent decree for the above-named Clean Water Act citizen suit. The motion for entry of the consent decree has been noted to allow time for your statutory 45-day review.

Sincerely,

s/Richard A. Smith
Richard A. Smith
Attorney for Plaintiff

c: Samantha Gamboa (via email, w/o enclosure)

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

FAST AUTO WRECKING & TOWING,
LLC,

Defendant.

No. 3:15-cv-05265-BHS

CONSENT DECREE

I. STIPULATIONS

Plaintiff Columbia Riverkeeper sent a sixty-day notice of intent to sue letter to Defendant Fast Auto Wrecking & Towing, LLC ("Fast Auto") on or about February 13, 2015, and filed a complaint on April 24, 2015, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from Fast Auto's facility in Battle Ground, Washington, and seeking declaratory and injunctive relief, civil penalties and attorneys' fees and costs.

As a result of the notice of intent to sue letter and complaint, Fast Auto has taken various actions to improve the quality of stormwater discharging from its Facility and to comply with the National Pollutant Discharge Elimination System ("NPDES") permit (No. WAR125108)

authorizing discharges of pollutants from the Facility to the Mill Creek, a tributary of the Columbia River.

Columbia Riverkeeper and Fast Auto agree that settlement of this matter is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

Columbia Riverkeeper and Fast Auto stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Columbia Riverkeeper's claims or allegations set forth in its complaint and its sixty-day notice.

DATED this 1st day of July, 2015.

GORDON & REES LLP

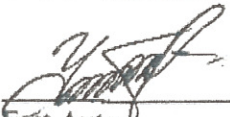
SMITH & LOWNEY PLLC

By s/Nancy M. Erfle
Nancy M. Erfle, WSBA # 20644
Attorneys for Defendant Fast Auto
Wrecking & Towing, LLC

By s/Richard A. Smith
Richard A. Smith, WSBA # 21788
Elizabeth H. Zultoski, WSBA #44988
Attorneys for Plaintiff Columbia Riverkeeper

FAST AUTO WRECKING & TOWING, LLC

COLUMBIA RIVERKEEPER

By 
Fast Auto
Alex Kutsar, President

By 
Brett VandenHeuvel
Columbia Riverkeeper, Executive Director

II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing Stipulations of the parties. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Each signatory for the parties certifies for that party that he or she is authorized to

CONSENT DECREE: No. 3:15-cv-05265-BHS p. 2

Smith & Lowney, p.l.l.c.
2317 East John St.
Seattle, Washington 98112
(206) 860-2883

1 enter into the agreements set forth below.

2 3. This Consent Decree applies to and binds the parties and their successors and
3 assigns.

4 4. This Consent Decree and any injunctive relief ordered within will apply to the
5 operation, oversight, or both by Fast Auto of its facility located at or about 21919 NE 72nd
6 Ave., Battle Ground, WA 98604 ("Facility"), which is subject to National Pollutant Discharge
7 Elimination System Permit No. WAR125108 ("NPDES permit").
8

9 5. This Consent Decree is a full and complete settlement and release of all the claims
10 in the complaint, the sixty-day notice and all other claims known and unknown, contingent or
11 otherwise, for any acts or omissions, existing as of the date of entry of this Consent Decree, that
12 could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from operations of
13 the Facility against Fast Auto, its subsidiaries, employees, agents, successors and assigns. These
14 claims are released and dismissed with prejudice.
15

16 6. This Consent Decree is a settlement of disputed facts and law.

17 7. Fast Auto agrees to the following terms and conditions in full and complete
18 satisfaction of all the claims covered by this Consent Decree:

19 a. Fast Auto will comply fully with all conditions of its NPDES Permit and
20 any successor, modified, or replacement permit authorizing discharges of stormwater
21 associated with industrial activity from the Facility;

22 b. Within seven (7) days of the entry of this Consent Decree, Fast Auto and its
23 stormwater consultant will review the Washington Department of Ecology's publication,
24 "Vehicle and Metal Recyclers: A Guide for Implementing the Industrial Stormwater
25 General National Pollutant Discharge Elimination System Permit Requirements" and add
26

1 all applicable best management practices (“BMPs”) to its Stormwater Pollution Prevention
2 Plan (“SWPPP”), including, at a minimum, the following BMPs:

3 1) Fast Auto will not drain fluids from automobiles at the Facility nor
4 conduct dismantling work at the Facility unless the work is enclosed in the
5 building referred to in the Facility’s SWPPP as “the shop” or otherwise on an
6 impervious surface and under cover. Under no circumstances may Fast Auto
7 remove fluids or dismantle or remove vehicle components from vehicles with
8 fluids in the vehicle storage yard. If Fast Auto continues to engage in fluid
9 draining or dismantling automobiles with fluids at the Facility, Fast Auto will
10 keep the shop and surrounding area unobstructed to ensure that automobiles are
11 able to move into and out of the building in the event that fluid removal or
12 dismantling of automobiles with fluid is needed;
13

14 2) Fast Auto will remove scrap parts, waste, and debris currently
15 stored at the Facility outside and without cover, including scrap metal, batteries,
16 trash, wood, and recycle or dispose of those materials in accordance with all
17 federal, state, and local laws. Fast Auto will minimize the amount of scrap and
18 waste debris, including tires, metal, trash, wood, and auto parts stored on site by
19 frequently recycling or disposing of those materials in accordance with all federal,
20 state, and local laws. Under no circumstances may Fast Auto store scrap engines,
21 batteries, or other scrap parts in the auto storage yard or another pervious surface.
22 Fast Auto will ensure that all scrap parts are stored on an impervious concrete or
23 chemically resistant asphalt pad. Until Fast Auto is able to pave the Facility and
24 build a new shop, however, Fast Auto should acquire additional dumpsters with
25
26

1 covers, tarps, and other materials and may use such materials to minimize contact
2 between industrial materials and stormwater to the maximum extent practicable;

3 3) Fast Auto will ensure all dumpsters are functioning and have lids
4 that are closed when not in use;

5 4) Fast Auto will store chemicals, oils, fuel, and other liquid pollutants
6 inside the building or under the cover and employ secondary containment for all
7 such pollutants;

8 5) Fast Auto will ensure that fluids are drained from automobiles
9 received by Fast Auto after the date of entry of this Consent Decree prior to
10 storage in the yard;

11 6) Fast Auto will implement grading, berming, or curbing surrounding
12 the shop to ensure that all processing is isolated from contact with rainfall or
13 stormwater runoff to prevent runoff of contaminated water.

14
15
16 No later than sixty (60) days after updating its SWPPP to include these new BMPs, Fast
17 Auto will fully implement the new BMPs and SWPPP required under this section II.7.b of
18 the Consent Decree;

19 c. To demonstrate that Fast Auto has implemented the additional BMPs
20 required under section II.7.b of this Consent Decree, Fast Auto will take photographs once
21 per quarter for one (1) year following entry of this Consent Decree. The photographs
22 must document that each of the additional BMPs described above are being implemented.
23 Fast Auto must send these photographs to Columbia Riverkeeper along with its quarterly
24 discharge monitoring report submissions required under section II.7.f of this Consent
25 Decree;
26

d. Fast Auto will begin sampling stormwater discharges from both of the outfalls at the Facility that are identified in Fast Auto's SWPPP;

e. For a period of two (2) years commencing on the effective date of this agreement, or until Fast Auto terminates operations at its current facility, Fast Auto will, no later than the discharge monitoring report due dates specified by the Permit, send to Columbia Riverkeeper, without charge, copies of all documents, including but not limited to discharge monitoring reports, correspondence, engineering reports, electronically transmitted information, and inspection reports, concerning the Permit or any successor, modified, or replacement permit that Fast Auto has transmitted to, or received from the Washington Department of Ecology since the previous submission to Columbia Riverkeeper under this paragraph. During each submission to Columbia Riverkeeper under this paragraph, Fast Auto will also include monthly inspection reports that have not been previously provided. This obligation will terminate if Fast Auto terminates permit coverage at the Facility and moves its industrial activities to a facility that does not require permit coverage.

8. Not later than December 1, 2015, Fast Auto will pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) by, to the Northwest Environmental Advocates for a project or projects to improve or protect the water quality of the Columbia River as described in **Attachment A** this Consent Decree. Checks will be made to the order of and delivered to: Northwest Environmental Advocates, P.O. Box 12187, Portland, Oregon 97212-0187. Payment will include the following reference in a cover letter or on the check: "Consent Decree, Columbia Riverkeeper v. Fast Auto." A copy of the check and cover letter, if any, will be sent simultaneously to Columbia Riverkeeper and its counsel.

1 9. Not later than three years after the entry of this Consent Decree, Fast Auto
2 shall pay Columbia Riverkeeper's actual litigation fees, expenses, and costs (including
3 reasonable attorney and expert witness fees) incurred in this matter in the amount of FIVE
4 THOUSAND dollars (\$5,000) by check payable and mailed to Smith & Lowney, PLLC, 2317
5 East John St., Seattle, WA 98112, attn: Richard A. Smith. Fast Auto's payment shall be in
6 full and complete satisfaction of any claims Columbia Riverkeeper has or may have, either
7 legal or equitable, and of any kind or nature whatsoever, for fees, expenses, and costs incurred
8 in the litigation. Fast Auto will make payments as follows:
9

- 10 a. \$2,000 no later than August 1, 2016;
11 b. \$2,000 no later than August 1, 2017; and
12 c. \$1,000 no later than August 1, 2018.
13

14 10. In the case of a force majeure event, Fast Auto will be given a reasonable amount
15 of time to perform tasks in paragraph 7 above. A force majeure event is any event outside the
16 reasonable control of Fast Auto that causes a delay in performing tasks required by this Consent
17 Decree that cannot be cured by due diligence. Delay in performance of a task required by this
18 Consent Decree caused by a force majeure event is not a failure to comply with the terms of
19 this Consent Decree, provided that Fast Auto notifies Columbia Riverkeeper of the event. The
20 notice will include a description of the event causing the delay; the steps that Fast Auto will
21 take to respond to the event and perform the task; the projected time that will be needed to
22 complete the task; and the measures that have been taken or will be taken to avoid or minimize
23 any impacts to stormwater quality resulting from the event and the resulting delay in completing
24 the task.
25

26 Fast Auto will notify Columbia Riverkeeper of the occurrence of a force majeure

1 event as soon as reasonably possible but, in any case, no later than seven (7) business days after the
2 occurrence of the event. In such event, the time for performance of the task will be extended for a
3 reasonable period of time following the force majeure event.

4 By way of example and not limitation, force majeure events include:

- 5 a. Acts of God, war, insurrection, or civil disturbance;
6 b. Earthquakes, landslides, fire, floods, drought;
7 c. Actions or inactions of third parties over which Fast Auto has no control;
8 d. Restraint by court order or order of public authority;
9 e. Strikes;
10 f. Litigation, arbitration, or mediation that causes delay.
11

12 11. This Court retains jurisdiction over this matter. While this Decree remains in force,
13 this case may be reopened without filing fee so that the parties may apply to the Court for any
14 further order that may be necessary to enforce compliance with this decree or to resolve any
15 dispute regarding the terms or conditions of this Decree. A precondition to any application to the
16 Court under this paragraph is that the parties must first seek to resolve the dispute themselves as
17 follows: 1) the party identifying or wishing to raise an issue or dispute must provide the other
18 party's counsel of record with a written notice detailing the nature of the issue or dispute; and 2)
19 within thirty (30) days of receipt of such notice the parties shall meet and confer regarding the
20 issue or dispute. If no resolution is reached at that meeting or within thirty (30) days of the
21 written notice, whichever occurs first, either party may file a motion with this Court to resolve the
22 dispute. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding
23 awards of costs of litigation (including reasonable attorney and expert witness fees) to any
24 prevailing or substantially prevailing party, shall apply to any proceedings seeking to enforce the
25
26

1 terms and conditions of this Consent Decree.

2 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
3 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
4 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
5 General and the Administrator of the U.S. Environmental Protection Agency ("EPA"). Therefore,
6 upon the filing of this Consent Decree by the parties, Columbia Riverkeeper will serve copies of it
7 upon the Administration of the EPA and the Attorney General, with copy to Fast Auto.
8

9 13. This Consent Decree will take effect upon entry by this Court. It terminates two
10 (2) years after that date, or 90 days after the parties' completion of all obligations imposed by this
11 Decree, whichever is later. Fast Auto shall provide written notice to Columbia Riverkeeper of its
12 completion of all obligations within fourteen (14) days of that completion, and Columbia
13 Riverkeeper will have thirty (30) days to provide a written response should it dispute that Fast
14 Auto's obligations are complete. In the event of a dispute over the completion of Fast Auto's
15 obligations and the termination of this Decree, either party may resort to the dispute resolution
16 provisions of paragraph 11.
17

18 14. Both parties have participated in drafting this decree.

19 15. This Consent Decree may be modified only upon the approval of the Court.

20 16. If for any reason the Court should decline to approve this Consent Decree in the
21 form presented, this Consent Decree is voidable at the discretion of either party. The parties
22 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court
23 to entry of this Consent Decree.
24

25 17. Notifications required by this Consent Decree must be in writing. The sending
26 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or

1 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
2 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
3 communication regarding this decree to be valid, it must be delivered to the receiving party at the
4 one or more addresses listed below or to any other address designated by the receiving party in a
5 notice in accordance with this paragraph 17.
6

7 **if to Columbia Riverkeeper:**

8 Lauren Goldberg
9 Columbia Riverkeeper
10 111 Third Street
11 Hood River, OR 97031

12 **and to:**

13 Richard A. Smith
14 Smith and Lowney, PLLC
15 2317 E. John St.
16 Seattle, WA 98112
17 rasmithwa@igc.org

18 **if to Fast Auto:**

19 Alex Kustar
20 Fast Auto Wrecking
21 P.O. Box 35
22 Battle Ground, WA 98604

23 **and to:**

24 Samantha L. Gamboa
25 Gordon & Rees, LLP
26 121 SW Morrison St.
Portland, OR 97204

18. A notice or other communication regarding this Consent Decree will be effective
when received unless the notice or other communication is received after 5:00 p.m. on a business
day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on
the next business day. A notice or other communication will be deemed to have been received:

1 (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized
2 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
3 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
4 change in address for which no notice was given, then upon that rejection, refusal, or inability to
5 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing
6 notice or other communication regarding this Consent Decree.
7

8 DATED this ____ day of _____, 2015.
9

10
11 HON. BENJAMIN H. SETTLE
12 UNITED STATES DISTRICT JUDGE

13 Presented by:

14 GORDON & REES, LLP

SMITH & LOWNEY PLLC

16 By s/ Nancy M. Erfle
17 Nancy M. Erfle, WSBA #20644
18 Attorneys for Defendant Fast Auto

By s/ Richard A. Smith
Richard A. Smith, WSBA #21788
Attorneys for Plaintiff
Columbia Riverkeeper

NORTHWEST ENVIRONMENTAL ADVOCATES



June 26, 2015

Thomas W. Swegle
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: **Columbia Riverkeeper v. Fast Auto Wrecking & Towing, LLC (Case No. 3:15-cv-05265-BHS)**

Dear Mr. Swegle:

This letter provides assurances that on behalf of Northwest Environmental Advocates (NWEA), I have received and read the proposed consent decree between Columbia Riverkeeper and Fast Auto Wrecking & Towing, LLC and that I am authorized to make the following binding commitments on NWEA's behalf, understanding that NWEA is to receive funds from Fast Auto Wrecking & Towing, LLC pursuant to that consent decree:

1. NWEA shall use the funds from Fast Auto Wrecking & Towing, LLC for a project or projects to improve or protect the water quality of the Columbia River;
2. NWEA shall send a report to the Justice Department, the Court, and the parties describing how the funds were used and demonstrating conformance with the nexus of the consent decree; and
3. NWEA will not use the funds received through this lawsuit for lobbying.

NWEA is a 501(c)(3) tax exempt organization; EIN 23-7421080. NWEA is a regional non-profit environmental organization incorporated under the laws of Oregon, with its principal place of business in Portland, Oregon, located within Multnomah County. NWEA's mission is to work through advocacy and education to protect and restore water and air quality, wetlands, and wildlife habitat in the Northwest, as well as nationally. To implement its mission, NWEA engages in advocacy and public education on a wide range of water quality programs, including the establishment of water quality standards, the identification of waters that fail to meet such standards, plans to bring such waters into compliance with standards, and the development and implementation of pollution controls on both discrete and land-based pollution sources.

NWEA has long been involved in seeking to improve the water quality and habitat of the Columbia River, particularly the estuary. Beginning in 1988 with the publication of a report on water quality of the Columbia, NWEA helped to create and co-chaired the Bi-State Lower Columbia River Water Quality Study, published educational materials and took the public on

Thomas W. Swegle
June 26, 2015
Page 2

boat tours of the Columbia and its tributaries, sought regulatory controls on pollution sources, opposed deepening the Columbia River shipping channel, and worked to strengthen the clean water regulatory programs of Oregon, Washington, and Idaho. NWEA's use of the funds from the consent decree will be similarly focused on protecting and improving water quality in the Columbia River.

Please do not hesitate to contact me if you have any questions or require further information at nbell@advocates-nwea.org or by telephone.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell", with a stylized flourish at the end.

Nina Bell
Executive Director